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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,788	10/27/2003	Aaron L. Mills	FGT 1867 PA	2787
28549	7590	11/20/2006	EXAMINER	
ARTZ & ARTZ, P.C. 28333 TELEGRAPH ROAD, SUITE 250 SOUTHFIELD, MI 48034			MANCHO, RONNIE M	
			ART UNIT	PAPER NUMBER

3663

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,788

Applicant(s)

MILLS ET AL.

Examiner

Ronnie Mancho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-9, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-9, 11, 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant argues that in response the election/restrictions submitted by the examiner, the applicant elected species C, wherein species C is directed to updating of a vehicle setting in response to “a bar code reader”. In response, it is noted that the applicant had also elected the species wherein the vision sensor comprises “a charged coupled device”. The charge coupled device is not a “bar code reader”. That is the bar code reader is a different species from a “charges coupled device”. Therefore, if applicant elected one species, the other species will be withdrawn from the group of claims.

Applicant further argues that the applicant elected the species drawn to “a controller updating a software setting”. In response, claim 9 reads on “a controller updating a software setting”. Since claim 9 is identical to claim 10, one of the claims had to be withdrawn to avoid a duplicate claim.

It is therefore believed that the election/restriction requirement is proper and thus stands.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3, 6-9, 11, 12 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. That is in claim 1, the invention does not disclose any tangible result. That is, the host vehicle in the invention wirelessly detects signals from an off-board vehicle. In response to the detection the controller updates a setting of the host vehicle. On the other the

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purpose of the update is not known. Therefore, the invention does not disclose any useful tangible result.

The rest of the claims are rejected for depending on a rejected base claim.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-3, 6-9, 11, 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 1, the applicant recites "a vehicle production line". This is new matter. It is noted that applicant mentions vehicles under production in the specification. On the other hand, when vehicles are under production, they may be taken for a test drive on the road or taken to wind tunnel, etc. The test drive or wind tunnel testing, etc are not on a production line as understood in the art. No where in the applicant's specification is "a vehicle production line mentioned".

The rest of the claims are rejected for depending on a rejected base claim.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-3, 6-9, 11, 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. In claim 1, it is not clear what all is meant and encompassed by “vehicle setting” in reference to update information.

In claim 3, it is not clear what all is meant and encompassed by “passive off-board” as disclosed in the claim.

The rest of the claims are rejected for depending on a rejected base claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3, 6-9, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmeen et al (2004/0114381) in view of Wolfe (2005/0228551).

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Regarding claim 1, Salmeen et al (inherently disclose figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose a wireless vehicle communication update system for a vehicle comprising:

a vision sensor 16 (sec. 0027, 0029, 0033-0035) sections coupling a vehicle body of the vehicle and wirelessly detecting a vehicle information signal from an off-board vehicle setting update device having setting information for the vehicle; and

a vehicle controller comprising logic to update at least one vehicle setting of a vehicle in response to said vehicle information signal (sections 0027, 0029, 0033-0035).

Salmeen disclose the system above, but did not mention a vehicle under production or a production line. However, Wolfe teaches of a vehicle production line wherein vision systems are tested before installation in a vehicle. Therefore, it would have been obvious to one skilled in the art to modify Salmeen as taught by Wolfe for the purpose of testing the Salmeen's vehicle vision system in a vehicle production line.

It is further noted that applicant admits in the specification that during production of a vehicle, vehicle settings and configurations are enabled to satisfy customer preference and other requirements; applicant's specification section 004. Therefore, the prior art vehicle must have gone through a vehicle production line.

Regarding claim 2, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim 1 wherein said vision sensor comprises at least one vision sensor selected from a camera, a charged-coupled device (section 0035).

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Regarding claim 3, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim 1 wherein said vision sensor detects said vehicle information signal from a passive off-board vehicle setting update device.

Regarding claim 6, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim 1 wherein said vision sensor detects said vehicle information signal from an off-board vehicle setting update system.

Regarding claim 7, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim 6 wherein said off-board vehicle setting update system comprises:

- a transmitter transmitting (fig. 1) said vehicle information signal in response to a pulse-coded signal (see prior art digital processor, fig. 1, sec. 0026, 0035);

- a signal generator generating said pulse-coded signal (transponder, fig. 1); and

- an update controller 18 (fig. 1) determining said at least one vehicle setting to update and causing generation and transmission of said pulse-coded signal and said vehicle information signal in response to said at least one vehicle setting (sections 0027, 0029, 0033-0035).

Regarding claim 8, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim 1 further comprising:

- a signal processor receiving and formatting said vehicle information signal for said vehicle controller, said vehicle controller updating said at least one vehicle setting in said formatted vehicle information signal in response to said formatted vehicle information signal (sections 0027, 0029, 0033-0035).

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Regarding claim 9, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim 1 wherein said controller in updating said at least one setting comprises adjusting at least one setting selected from a memory setting (sections 0027, 0029, 0033-0035).

Regarding claim 11, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim 1 further comprising an indicator coupled to said vehicle controller and indicating at least one current vehicle setting.

Regarding claim 12, Salmeen et al (figs. 1-6, abstract; sections 0010-0016, 0027, 0029, 0033-0035) disclose the system as in claim further comprising an indicator coupled to said vehicle controller and indicating when said vehicle information signal is received (sections 0027, 0029, 0033-0035).

MPEP 2114

10. The statement of intended use or field of use, "under production", "updating-----in response to", "transmittingin response to", "determining.....to", "causing generation and transmission of.....in response to", "receiving and formatting", "updating.....in response to", "updating.....comprises adjusting", "indicating when.....is received", etc clauses are essentially method limitation or statement of intended or desired use. Thus, the claim as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647. See MPEP § 2114 which states:

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A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Response to Arguments

11. Applicant's arguments filed 8-28-06 have been fully considered but they are not persuasive.

Applicant argues that the limitation, “passive off-board” is clear in view of the present application. The examiner has considered the prosecution history of the case, but found no distinct disclosure by the applicant of the meaning “passive off-board”. The term is arguably inconsistent in meaning in the art. Some refer to passive as a circuit that does not dissipate heat, or does not consume energy, or does not electrically conduct current, etc. Applicant argument that “passive off-board” as disclosed in the claims refers to a device that does not generate and transmit a signal is not disclosed in the specification. It is only in the response to the first office action that the applicant raises the new explanation. The limitation is still believed to be

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indefinite since the applicant had no possession of the current explanation in the original disclosure.

Next, the applicant argues that in the prior art, the communication signal does not contain setting information for the update of a host vehicle. It is noted that the prior art receives or detects signals from an off-board vehicle.. In response to detecting the signals the host vehicle's system are updated. See for example section [0057] which recites "In step 106, the controller 18, in response to the object detection signal, may select an *updated beam pattern* or adjust the existing beam pattern. The object detection signal may include various object related information. The updated beam pattern may also be selected in response to vehicle or navigation data generated from the vehicle sensors 26 and the navigation system"

See also section [0058], which recites "In step 108, the controller 18 may generate multiple safety system signals in response to the object detection signals. The safety system signals may include not only beam pattern information but also other information related to adaptive cruise control, lane-departure or lane-keeping control, and countermeasure control."

See also section [0059], which recites "In step 110, the controller 18 in response to the safety system signal may perform various tasks related to the above-mentioned safety system controls and operations. For example, the controller 18 may adjust traveling speed of the vehicle 12, as part of an adaptive cruise control operation, to prevent colliding with the detected object."

The communication signal received also is used to update the host vehicle's headlight by adjusting the beam of the head light, etc.

The applicant next argues that Saleem does not disclose a vehicle production line having setting information for a vehicle under production. It is noted that the limitation is a method step

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in an apparatus claim and thus does not serve to distinguish the invention from the prior art. In addition, the argument is moot in view of the new 103 rejection.

The applicant further traverse the MPEP 2114 section on the basis that the invention is different from the prior art. The applicant supports their argument by stating that both inventions are different because the controller of both inventions function differently. It is noted that the applicant's argument does not show support for physical or structural difference, but only difference in the way the controllers function or the way they are used. Applicant even admits that the scope of "a vehicle setting" is not disclosed. Applicant states that there is no need to provide the meaning thereof because the prior art does not anticipate the limitation anyway. It is noted that applicant is required under 112 to distinctly and patentably claim the invention. Applicant is claiming an abstract idea which abstract idea possesses no meaning.

Applicant is required to choose one species only. Applicant cannot choose a bar code reader and a camera or a charged couple device at the same time.

It is believed that the rejections are proper and thus stand.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Communication

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571-272-6984. The examiner can normally be reached on Mon-Thurs: 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronnie Mancho

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Examiner
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11/12/06


JACK KEITH
SUPERVISORY PATENT EXAMINER